IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10836 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESHKUMAR SHANTILAL DHIMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10836 of 2004

MR MY RADHANPURWALA for Petitioner No. 1

MS HANSA B.PUNANI, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 27/12/2004

ORAL JUDGEMENT

Heard Mr.M.Y.Radhanpurwala, learned counsel appearing for the petitioner and Ms.H.B.Punani, learned AGP, appearing on behalf of the respondents.

2. The present petition is filed under Article 226 read with Articles 14, 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 17th June, 2004, passed by the District Magistrate, Surat, under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act'). The petitioner is branded as a "bootlegger" within the meaning of Section 2(b) of the Act.

3. While recording subjective satisfaction, the Detaining Authority and District Magistrate, Surat, has considered the fact of registration of three different criminal offences between 08th January, 2004 and 30th April, 2004, punishable under Bombay Prohibition Act. Two offences have been registered at Bardoli Prohibition Police Station and one registered at Olpad Police Station. No formal statements were recorded by the sponsoring authority making allegations against the bootlegging activities or the conduct of the present petitioner so that the subjective satisfaction recorded on the ground of the fact of registration of three offences, and it appears that in the last offence, Indian made foreign liquor of worth of Rs.51,840/- was recovered by the investigating agency.

4. The order of detention assailed on various grounds. However, Mr.Radhanpurwala, learned counsel has concentrated his arguments mainly on the ground that, fact of registration of three offences punishable under the Prohibition Act ought not to have been considered as a bootlegging activities prejudicial to maintenance of public order. In support of this submission, learned counsel has placed reliance on the observations of the Apex Court in the case of Kanaji Jhala, it is not necessary to reproduce the relevant paras 4, 5 and 6 of the said decision.

5. It is argued that today this Court, while allowing the petition of Vastaji @ Gop Somaji Marwadi Vs. State of Gujarat being Special Civil Application No.10746 of 2004, has observed that, registration of criminal offences punishable under Prohibition Act itself cannot be said to be prejudicial to maintenance of public order. Placing reliance on three decisions of this Court, in one of the case preferred to by the Court, large quantity of Indian made foreign liquor was recovered by the investigating agency.

6. Having considered the fact in case of Vastaji Gop Somaji Marwadi (supra), and the observations made therein, this petition can be allowed on the ground that subjective satisfaction recorded by the detaining authority is cannot be said to be based on any cogent material under which it was possible to inform that the petitioner is a bootlegger within the meaning of Section 3(2) of the Act and, therefore, requires to be detained and the activity was prejudicial to maintenance of public order or public health. In absence of the two grounds pressed into serviced by learned counsel for the petitioner is that, this is a case of unexplained delay of one and half month's in passing the detention order, this Court can consistently considered the registration of last offence, especially, in absence of statement of witnesses recorded by the sponsoring authority.

7. So far as present case is concerned, the last offence registered against the petitioner is of 30th April, 2004, and the order of detention is of 17th June, 2004, the detaining authority could have passed the order promptly and unexplained delay of one and half months' would go to the validity of the order of the detention in light of the observations made by this Court in Special Civil Application No.10182 of 2003 dated 26th August, 2003 (Coram: J.R.Vora, J.), and therefore it is not necessary to reproduce para 6 of this decision, but the ratio is that the preventive detention order should be passed promptly and the delay which cannot be said to be reasonable, and the time consuming in passing the preventive detention order needs satisfactory explanation. Absence of such explanation would made the order bad. For short, the Court is inclined to allow the petition.

8. In view of the above, the present petition is allowed. The order of detention dated 17th June, 2004, passed by the respondent No.2 herein is quashed and set aside and the petitioner-detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(C.K.Buch, J.)

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